

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

BRENDA WALKER,

Plaintiff-Appellee,

v

EVERETT L. HARRINGTON, JR.,

Defendant-Appellant.

---

UNPUBLISHED

June 13, 2000

No. 216794

Saginaw Circuit Court

LC No. 96-016032-DP

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

MEMORANDUM.

Defendant appeals as on leave granted the trial court's order granting summary disposition to plaintiff in this paternity action. We affirm.

Plaintiff filed a complaint seeking an order of filiation and child support for her daughter, born March 5, 1985. Defendant submitted to a court-ordered blood test that showed a 99.98% probability that he was the father. Although the complaint alleged that the child was conceived on June 8, 1984, plaintiff testified in her deposition that the date of conception was June 29, 1984.

Plaintiff and defendant both filed motions for summary disposition under MCR 2.116(C)(10). Plaintiff relied on the results of the blood test, while defendant asserted that the child could not have been conceived on June 29, 1984, and resulted in a full term delivery on March 5, 1995. The trial court granted summary disposition to plaintiff, finding that defendant failed to present substantial evidence to overcome the presumption of paternity.

Section 6(5) of the Paternity Act, MCL 722.716(5); MSA 25.496(5), provides:

If the probability of paternity determined by the qualified person described in subsection (2) is 99% or higher, paternity shall be presumed. The burden of proof is upon the alleged father to rebut the presumption. If 2 or more persons are determined to have a probability of paternity of 99% or higher, paternity shall be presumed for the person with the highest probability.

The rebuttable presumption established in §6(5) of the Paternity Act can result in summary disposition under MCR 2.116(C)(10) where a defendant fails to present substantial evidence to rebut the statutory presumption of paternity. *Isabella Co Dep't of Social Services v Thompson*, 210 Mich App 612, 615; 534 NW2d 132 (1995). While defendant argues that plaintiff failed to present evidence to counter his motion, the trial court found that defendant failed to present the necessary evidence to rebut the statutory presumption, and defendant did not raise a genuine issue of fact to which plaintiff was required to respond. *Id.* at 617. We agree with the reasoning of the trial court. Accordingly, we conclude that summary disposition was properly granted to plaintiff pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra